

LAKE COUNTY BOARD of ADJUSTMENT
February 9, 2011
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Laverty, Tim McGinnis, Paul Grinde

STAFF PRESENT: Joel Nelson, LaDana Hintz, Tiffany Lyden, Lita Fonda

Tim McGinnis called the meeting to order at 4:02 pm

Motion made by Clarence Brazil, and seconded by Paul Grinde, to approve the January 12, 2011 meeting minutes. Motion carried, 3 in favor (Clarence Brazil, Tim McGinnis, Paul Grinde) and one abstention (Sue Laverty).

MILLINER VARIANCE & CONDITIONAL USE—UPPER WEST SHORE

LaDana Hintz presented the staff report. (See attachments to minutes in the Feb. 2011 meeting file for staff report.) Regarding the request to allow slopes exceeding 25% up to 50% to be deemed buildable area (mentioned on pg. 16-17), she pointed out that this had been done previously, and in the last one done, which was approved, the applicants were requesting 35% slopes to be deemed buildable. This was a little more than that one, but it had been considered before.

Ken Miller of Architects Northwest spoke on behalf of the applicants. He introduced the design team, the TD&H representative Doug Peppmeier, the contractors George and Lucille Eisenhart, and his partner Allen Peterson. He was prepared to show the aesthetics of the house. The owners wanted a house in the design of Frank Lloyd Wright. The pitched roof of the first four designs was changed to a flat roof for reasons of height in the fifth design. He asked if some flexibility from the 36' height limit existed since they had not yet gone beyond the schematic designs. Could they be off by 6 inches? LaDana explained the legal notice listed 36' for the limit. The height could be lower by 6 inches. Tim clarified the fixed number was important so the Board had a definite number to deal with. The precedence has been if the height was listed as 36', then it was 36'. Ken offered again to show materials on the house design. He introduced Bob Betts, the chairman of the area's Architectural Control Committee.

Sue asked about the accesses. One appeared to be from Osprey Loop, and the other crossed two other properties. Ken replied an easement road came in that served two other properties and that also served this property on the lower level. This would be the private entrance to the garage. There would be another access for company or people visiting. He noted they wanted to build in the middle of these properties to keep the project down and to avoid blocking the view from Osprey Loop. There was little interference with the Flathead Lake view. Tim asked how much was little. Ken showed a cross-section to illustrate how the building sat down below the road somewhat. He mentioned the fire access and fire hydrant on the side.

Public comment opened:

Steve Rosso: He thought the property owners hired very good engineers, designers and architects to work on this project. Given the soils, steep slope and so forth, it would be a challenge to handle the stormwater runoff from the impervious surfaces. The materials indicated the applicants wanted to pull back the final design of the stormwater runoff plan until they knew there was conditional use and variance approval. He thought that was fine, but asked for a condition to make sure this was done before construction began.

Tim thought that was covered. Sue asked if that was part of condition #14. LaDana suggested asking the agents.

Doug Peppmeier: He was the civil engineer on the project. LaDana had asked them to submit calculations of how that stormwater would be dealt with. The existing site was very steep and unvegetated, and has runoff to it. They don't want to release more than currently went to the lake. The volume of water wouldn't increase, but it would peak faster, so there would be a lot more flow a lot quicker. There was one spot on the site that lent itself to some infiltration. They proposed building a below-grade detention system. It would essentially gather those peak flows and hold them back. It would still be released. He showed the Board the swale on a diagram, and spoke further about it. They dug 4 test pits on the site, and had bedrock in each one. It was hard to get water into the ground, but they wanted to maximize what they could get into the ground. They would get some with the detention system up there. When it rained and there was a big gush of water, there would be a volume that could be held in the parking area. The release could be controlled by a smaller orifice that would let a certain amount of water out. They didn't want erosion or dirt in the water, since then it would end up in the lake. They met once and would need to sit down again and work through it. The regulations were written more to infiltrate on site, but in this case there was bedrock.

Tim checked if the water was being held in the parking area. LaDana clarified that it was under the parking area in storage chambers. Doug discussed a diagram further with the Board. LaDana thought the final plan was in, and checked that Doug referred to tweaking. Doug replied they needed to work on details. Sue said when a permit was approved, they would need to implement this immediately. Doug said they had the concept. They hadn't done the intricate details or construction documents. The calculations had been completed. LaDana thought they'd want the final plan. Joel noted it would need to be within the parameters of the conceptual plan.

Public comment closed.

LaDana suggested adding a condition to cover this, and leaving #14 as it was. Joel suggested the condition could be that *prior to the permit issuance, the final stormwater plan would be submitted to the Planning Dept for review and approval, within the parameters of the conceptual plan.*

Tim commended the applicants for a timely and professional job. Sue added thanks to the staff for their good job.

Motion made by Paul Grinde, and seconded by Clarence Brazil, to approve item #1 (on pg. 23 of the staff report) for the conditional use to allow the disturbance of approximately 18,089 square feet of natural slopes that exceed 25% within 300-feet of the high watermark on a lakefront lot. Motion carried, all in favor.

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve item #3 to grant a variance to allow a structure to be located on slopes exceeding 25%. Motion carried, all in favor.

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve item #4 to grant a variance to allow slopes of 25%, up to 50%, to be deemed buildable areas. Motion carried, all in favor.

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve item #5 to grant a variance to allow a structure to exceed 30-feet in average height as measured from the natural grade. Motion carried, all in favor.

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve item #2 for the conditional use to allow for impervious surface areas covering between 29 and 49 % of the buildable area of a lot (impervious surface area proposed is 39%) the variance with staff recommendations. Motion carried, all in favor.

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve items #6 and #7, with an added condition #23:

- to adopt Staff's suggested findings of fact regarding the conditional use and variance requests
- to impose the conditions on the project as recommended by staff with the addition of a condition #23
- to add condition #23 that prior to the permit issuance, the final stormwater plan shall be submitted to the Planning Dept for review and approval, within the parameters of the conceptual plan.

Motion carried, all in favor.

PINNACLE PROPERTIES VARIANCE & CONDITIONAL USE—UPPER WEST SHORE

Tiffany Lyden presented the staff report. (See attachments to minutes in the February 2011 meeting file for staff report.) Tiffany handed out and presented two letters of public comment that were received after the staff report was completed. (See attachments to minutes in the February 2011 meeting file for letters.) She made one correction to the report in #11 on pg. 22, where the last sentence was changed to read: *The Lake County Planning Department reserves the right to request additional information as needed prior to issuance of a permit.*

Travis Denman of Denman Construction spoke on behalf of the applicants. He introduced Craig Denman and Nick Fullerton the architect. The house was centered in a nearly 19-acre lot with substantial amount of vegetative buffer around the house. In regards to some of the staff recommendations, they were currently working with Donny the Sanitarian through Ed Benson, their excavator to work through that process. The location for the silt fence and containing runoff through the construction process was noted on the site plan, as was a construction fence. They would maintain a vegetative buffer around the lake. The construction fence would be removed at the project end, and natural vegetation and landscaping would take place. Extra blasting materials would be removed from the site.

Travis spoke regarding Joan Renne's letter. She was a neighbor with whom they were working through the easement process. They wanted to continue to work with her and get her involved as much as possible. They were environmentally conscious and wanted to work through concerns that she might have. Per her mention of erosion to the current road, their excavator checked and saw no signs. It was a well-constructed road. Retaining had been done around every culvert, both on the uphill side and the lower side, to dissipate consolidation of flow. They'd be happy to address concerns that she might have, and would be happy to walk the site with her if she wanted to. She had mentioned removal of a large amount of trees. Roughly 10 to 15 trees were removed during the road construction, and were still on site.

Regarding the Albert Family letter, the applicant desired the same privacy and view sheds as the Alberts. They already talked about maintaining the vegetative buffer on the south side. They didn't see that there'd be a visual disturbance there. They wanted to maintain the buffer and possibly plant more vegetation there.

Clarence asked about the removal of the downed trees. Travis said those were in a log deck and cleaned up. Those would be loaded up and taken off, once approval was granted. Tim asked if there was a landscaping plan. Tiffany said there wasn't one specifically, other than the site plan that talked about revegetating after the project had been completed. Part was the house was so far from the lake that they weren't at the buffer.

Public comment opened: None offered. Public comment closed.

Motion made by Paul Grinde, and seconded by Sue Lavery, to approve:

- **the variance to allow the proposed structure to be located on slopes exceeding 25%**
- **the conditional use request for the disturbance of more than 500 sq ft of natural grade of slopes over 25% within 300-feet of the high water mark on a lakefront lot**
- **adoption of the finding of fact proposed by staff**
- **imposing conditions on the project as recommended by staff, with #11 as corrected.**

Motion carried, all in favor.

MERRIT/ BARONE VARIANCE—FINLEY POINT:

Joel Nelson presented the staff report. (See attachments to minutes in the February 2011 meeting file for staff report.) Joel noted the pgs. 2 through 11 listed the applicable local and state laws, and the less directly applicable regulations were grayed out. He clarified that the strange characters that appeared in the email of public comment were not intended by the writer, Diana Steffes, and that this email was from the adjacent owner who was to the south, rather than the north, of the subject property. In speaking to Joel, Diana S also added that the home had been upgraded in many ways. The renters told her they thought the owner hadn't planned on renting it because it was so fancy.

Clarence asked when the Finley Point zoning regulations changed to not allow an additional house if a property had sufficient density. He recalled that was not the regulation in 1992 or 1993, when he built a second house for a rental. Joel explained there had been no change in that regard during his time with Planning, which was since summer of 2005. A variance would be needed to put a second residence on one tract of record. One residence and a permitted guest house were allowed. He and Clarence discussed this further. Clarence outlined his experience. Joel outlined some variances that were reviewed around 2004 to 2006. The main change in 2006 to the regulations made two guest houses per tract require a variance. He pointed out that if the number of houses depended on the density, it would make the point of allowing one guest house per tract moot. You could just have as many houses per tract as the density allowed.

Tim asked about a previous application. LaDana asked if he meant Mamie Nelson's application, which was for a granddaughter, in Upper West Shore zoning. It was written differently. Tim confirmed with Joel that if a guesthouse had been requested, the procedure would be to get a conditional use since it was greater than 1000 square feet. A caretaker would require a variance to live in it, because it would not meet the definition of a guest house, since short-term use for a guest house was not to exceed 30 days.

Norma Merritt, the applicant, spoke on behalf of the application. The current house was tiny as far as living room and kitchen, so they wanted to build a second home. They would like to use the current house, which was a nice house, as a guest house at present, which might not have been clear on the application. Looking down the road, they wanted to stay in their own home when older. This property might be more than they could handle, as they aged, and if they were to have disabilities as they aged, they might need more help to maintain the property properly, either from someone hired or from a family member. That was down the road, so they didn't know details, but prior to purchasing the property, they wanted to clarify what they could do. They weren't there yet. She hoped this clarified their intent with the application. Tim said it appeared they requested was a caretaker house, not a guest house. She said apparently that was the request, but they didn't need a caretaker at this point. As far as subdivision, they thought a variance would be less intrusive of the property down the road. As far as someone living with them, they assumed that would be multiple-family and wouldn't be allowed.

Diana Luke, the agent, spoke on behalf of the application. They were the agents for Al Barone, the current owner, when he proposed to develop this property. She referred to a variance a neighbor recalled, and noted at one time the owner proposed to subdivide the property into two, but that was abandoned due to the wants and needs of the client, not due to a difficulty with the process. He then applied for a conditional use to utilize the present house as a guest house. He didn't develop the property and the conditional use expired. The property was now on the market.

The difficulty with the Merritt variance request was that it was difficult to prove hardship, because they were looking forward and had not yet purchased the property. If they purchased the property and in 15 years needed a caretaker, then they'd be in front of the Board with that request and hardship would be easier to prove at that point. Tim asked why they didn't ask for a conditional use for a guest house. Diana replied the Merritts wanted to know prior to purchasing that they could have a full-time caretaker on the property. Meanwhile, they'd like to use it as a guest house. She didn't believe the Merritts would purchase the property without the peace of mind that they could have that use. Regarding subdivision, that allowed for two single-family residences and two guest houses. Having caretaker staff in the proposed structure would create a multi-family situation. She thought this request was the least impact. She commented as an aside to Clarence that she thought his experience had probably been in 1998.

Public comment opened: None offered. *Public comment closed.*

Clarence commented a caretaker was a great idea, because he and his wife experienced theft when gone, and had to have someone check on the house and pipes and so forth when they were gone. Whether it was legal was another thing. Tim agreed with Clarence. He felt given a 3-acre property with a 1.5-acre density, without taking time to go through the subdivision process, the character of the neighborhood wasn't changed and this seemed the simplest solution. He didn't know that it dotted the i's and crossed the t's, so he had a bit of a dilemma.

Sue didn't think it was appropriate. She stood with the staff report. It wasn't the appropriate property, if this was what the new owner might be looking for. Other property owners might not be looking for that. A caretaker would be for rent or lease space, because they were compensated in some way. She didn't think the hardship was there at this point in time for this property. It would be nice to have the things requested, and we all wanted to take forward, but perhaps another property would be more in keeping with what the applicants envision happening in the future or securing for their future. They could take the property as it stood and cross that bridge down the road when there might be more of a hardship. She didn't think this request qualified.

Clarence said the density was there so they could subdivide and use the house and build two guest houses. Paul said there were a lot of guest houses in the area, and those were a permitted use. Sue said there might be more structures on the property, but they would not necessarily be occupied on a full-time basis. If the property was subdivided, you might have 4 structures, but they wouldn't all be occupied on a full-time basis. Clarence

asked what it took to subdivide the property. Joel replied the answer to that was a little more complex than he was ready to speak on at the moment. Tim said that the possibility did exist. Clarence asked about the cost for subdivision. Joel and Diana listed some costs. Clarence thought the total would be about \$6000 to \$7000 dollars. Diana thought it would be a 2-year window. Joel explained that subdivision review evaluated a lot of different things that weren't evaluated during a variance or conditional use review. For instance, road networks and noxious weeds were reviewed.

Paul was torn. Lots of people would like to have the option of a caretaker next door. He thought on the board he'd been on, if there were a situation with a guest house and a need of full time care, he had no question the board would approve that. He thought this process was backwards. They could subdivide it, which was fine, or use it as a guest house until the needs changed. Tim asked then why not grant that now. Sue thought it was the cart before the horse. It was speculative. Paul wondered about the precedence it would set for the future. There may be future board members who would not want that. Clarence said he would say no, if the density wasn't there. Tim agreed with Clarence that he would be opposed if it were not for the size of the parcel and the density there.

LaDana recalled the review of Roilene Jone's proposal, which had a similar goal. She didn't need a caretaker full-time at this point. She was planning for the future. LaDana suggested to her that it wasn't a hardship at present, and when she needed it, to come back and ask, when a hardship existed and she could demonstrate that she needed it. You could have a guest house, and currently could not have and did not need someone there full-time. Sue thought that [proposal] hadn't proceeded due to difficulties with the septic approval. LaDana noted that items like this had come before, and people have asked for things before they needed them. She said Joel took those things into consideration in the staff report. Joel said it was hard to demonstrate a hardship when you didn't own the property. Tim disagreed.

LaDana said if the hardship wasn't there yet, you were speculating. You could opt to not buy the property if you couldn't do what you wanted with it. Sue said there were different ways to go about it. You could have the guest house that exceeded 1000 square feet. The primary house could be built, or modified to be smaller or you modify it to be bigger to accommodate an interior sort of caretaker within the structure. There were a lot of options that could be used without asking for a conditional use. They could remodel what's there. New construction and septic were pricey. It could become one structure with a nice suite for a caretaker. There were a lot of options and it wasn't a hardship.

Tim hated to see the rules get in the way of what seemed reasonable, particularly for the Board of Adjustment. For him, this seemed reasonable. Sue agreed, but she thought sometimes they could get caught up in thinking something was reasonable, which then came back to bite them in future cases down the road. It had done this in the past. Tim agreed precedence was dangerous to set. He saw his protection from that as the size of the parcel meeting the zoning density requirement.

Paul asked how the Board might choose wording to require this to be a guest house. Clarence thought they were asking for a guest house at this point, not a caretakers house. Joel clarified they hadn't asked for a guest house, so that could not be approved right now. Clarence said they would have to resubmit to use it as a guest house now, and a caretakers house later. Joel explained they would need a conditional use for a guest house exceeding 1000 square feet. Clarence said they would also need a variance to make it a caretakers house in the future.

Ric Smith received permission to speak to the Board, since public comment had ended. He was the broker for the buyers, and lived on Finley Point, and was previously on the Planning Board. He advocated for lower density on Finley Point. Often the problem with zoning was density guidelines were created that got decreased but not increased. He felt strongly that the density should be adhered to. Ric agreed with Tim and Clarence that he would not be for this, as a resident of Finley Point, if it didn't meet the density. He remembered regretting some votes on variances. They were hard. He felt he would rather see one lot rather than two, as far as density. He felt that better limited the density of this tract.

Clarence thought the applicants could subdivide it, or if the Board decided to approve this as it was, a restriction could be added that they could not subdivide it in the future. Paul didn't think it could be split with this plot plan. Joel didn't see an obvious reason it couldn't be subdivided if their current proposal was done. He doubted a restriction to not subdivide it would accomplish much, since the board that put the restriction on would be the same board to approach to ask for the restriction to be lifted. Sue noted the variance wasn't for a caretakers cabin. It was for a second single-family dwelling on a lot.

Diana reviewed that in talking with the Merritts and working with Joel, the subdivision possibility was discussed. Mrs. Merritt's focus was the caretakers' residence, which required a variance. Did you request what you wanted, and give alternatives, and weaken your original request for a variance? That's why they focused on a second single-family residence for use on a full-time basis as a caretakers' residence rather than giving the board three different scenarios. They don't know at this time if the caretaker would be a family member or not. That was why they didn't do a variance and a conditional use. They thought it could be a condition on the variance that the house be used in a guest house manner until such a time that the caretaker kicked in.

Joel thought that was an interesting question. If it was approved as a single-family residence but not quite occupied as such, being occupied as a guest house, that would fit; it would be a way of getting a guest house without getting approval for a guest house. Diana asked if it would work as a condition. LaDana asked what the structure would be when the property changed hands. The variance would sunset, but what would the structure be? What could the new owners use it for?

Sue said the materials said when the variance sunset, the structure would have to be removed. LaDana said why not get the conditional use for the guest house now, if that's what they wanted. Otherwise it would be a problem down the road when they tried to

sell the property. Joel agreed it could be a problem property if it was approved like this. Sue thought it would behoove them to withdraw this, and return to ask for a guest house.

Diana asked if this came back next month for a conditional use with the same packet, could it be approved today. Joel said the packet would be different, since the standards to evaluate a conditional use were different. LaDana added legal notice for a conditional use needed to be run. Diana pointed out the location of the main house, the size and structures and the stormwater wouldn't change. Sue noted the findings of facts would need to match for a conditional use.

Norma Merritt asked what this meant. Her first concern was to have a residence there. Was that denied? Joel explained the main item for action was whether or not to grant a variance for a second residence for a caretaker. If the variance was denied, she wouldn't be able to get a permit for the new house, unless she altered the plans to make it a permitted use, or came back for a conditional use or some other approval from the Board. She checked that she would need to reapply to build the second house and then to use the existing house as a guest house. Joel explained the existing structure had more than 1000 square feet of living area. Without making changes to the structure, they would need to get a conditional use for it to be a guest house. It could become a permitted guest house if it had less than 1000 square feet.

Motion made by Sue Lavery to deny the variance request and incorporate the staff findings of fact. Motion died for lack of second.

Paul asked if the board approved this, the albatross was the structure had to be taken out or go away when the property changed hands. Tim asked where that was. Sue pointed to #5 on pg. 18. Paul said the new owners would have to come back, or the structure needed to be modified, so the structure didn't necessarily have to go away. He asked if they could require the owners to use it as a guest house with less than 30 day occupancy, until such time as they needed a caretaker. Joel said that would be approving a conditional use when that hadn't been applied for or legally noticed. Paul thought they were modifying it as a lesser scenario. Joel thought it would still be approving it as something that required a conditional use, even though it was less than what was required for a variance. Clarence asked for staff recommendation other than denial. Joel replied 18 drafted conditions were available to kick around to see how this worked within the confines of a variance request.

Diana asked if it could be conditioned that the Board approved the idea of a guest house in the future, just give the variance, and require that the actual conditional use come back before the Board prior to construction. Joel thought the whole thing might as well be left open to consider at one time. The Board could deny the request or the applicants could withdraw it. Tiffany asked if it could be reviewed again if the request was denied. Joel said they could request re-review, and fees would need to be accessed per need and it would be renoticed as they represented it. He thought they could work out something with the deadline [for the next meeting]. There would be some additional fees for the

additional notice and request. Joel thought if they withdrew it, the applicants would like to be back soon.

Diana asked if they withdrew the request and came back with a conditional use request next month, could they still have the caretakers' variance tabled for a month. Joel said if they wanted the variance postponed to next month, the only Board action would be to table it per that request. Sue summed they would come back with the variance request and then another packet for the conditional use. Joel noted he would redo the staff report. Currently there's a variance application and supplemental information tied to the zoning conformance application. There'd be a conditional use application to reference the same supplemental information.

Motion made by Paul Grinde, and seconded by Tim McGinnis, to table (postpone) consideration of the variance request.

Joel asked the Board to clarify with the Merritts that this was what they wanted. Diana asked if they felt the guest house would [inaudible] in a month. LaDana said they'd have to go through the findings and so forth. They couldn't guarantee a decision by the Board. Diana rephrased to ask if they foresaw difficulties. Sue said she could look at how many times people had come to this board with this request. Diana said the history of this property was that a conditional use for a guest house had been approved. Joel said that in 2007 [this structure] had been approvable before as a guest house, subject to conditions. Diana said the applicants would like to request an extension to table the variance until next month, to apply for a conditional use.

Motion carried, all in favor.

OTHER BUSINESS

Tim McGinnis adjointed the meeting as acting chair. Meeting adjourned at 6:40 pm.